

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE

and

IN THE MATTER OF A COMPLAINT MADE BY MRS. DAISY ANDERSON OF OTTAWA, ONTARIO, THAT SHE WAS DENIED THE RENTAL OF LIVING ACCOMMODATIONS BECAUSE OF HER RACE AND COLOUR BY MR. AND MRS. G. MASCIOLI OF OTTAWA.

By an Appointment dated September 21st, 1971, the undersigned was constituted a Board of Inquiry to inquire into the above matter. The hearing took place in Ottawa, Ontario, on November 2nd, 1971. Mr. J. Sopinka, Q. C. appeared on behalf of the Ontario Human Rights Commission and Mr. R. A. Ritchie appeared for the respondents.

No objection was taken to the competency or the procedural jurisdiction of the Board and the evidence was undisputed that the rental accommodation in question was a "self-contained dwelling unit" within the meaning of Section 3 of the Code.

On March 15th, 1971, Mrs. Daisy Anderson, a Jamaican Negro, filed a complaint with the Ontario Human Rights Commission alleging that she was discriminated against because of her race and colour by Mr. and Mrs. Mascioli of 75 Holland Avenue, Ottawa, in the rental of Apartment #3, 75 Holland Avenue. Unfortunately, the foregoing statement practically exhausts the non-contentious matters that are relevant. In most other respects the evidence of the parties, and their supporting witnesses, was so diametrically opposing, that it is impossible to give credit to both versions and one must be accepted in preference to the other.

The salient dates and events will now be briefly described. For some days previous to March 9th, 1971, Mrs. Daisy Anderson had separated from her husband, following Family Court proceedings, and, with her teenage daughter Joan, had been looking for rental accommodation in the area of the Ottawa Civic Hospital, where Mrs. Anderson worked in the Housekeeping Department, and Fisher Park High School, where Miss Joan Anderson attended. From this point of view, the Mascioli Apartment Building at 75 Holland Avenue was ideal, being within walking distance of both the Hospital and the school.

From March 2 - 9th Mr. Mascioli caused an advertisement to run in the local paper, advertising a two bedroom apartment for rent on Holland Avenue, for \$150.00 a month, and giving a phone number. This advertisement was reinserted in the newspaper for the period March 10 - 17th. On March 9th, Miss Joan Anderson saw the advertisement, called the number listed, and was informed by Mrs. Mascioli that the apartment was available. That same day, Miss Anderson went to the apartment building where she met Mrs. Mascioli. According to Miss Anderson, Mrs. Mascioli immediately informed her that the apartment unit had been already rented. Mrs. Mascioli denied saying this and, contrary to Miss Anderson's testimony, swore that she actually showed an apartment to Miss Anderson, and was willing to rent to the latter, but that Miss Anderson did not evince any particular interest and left without further conversation. On March 12th Miss Anderson saw the advertisement once more in the paper and again phoned and was told that the apartment was still available.

The next day, March 13th, Miss Anderson, her mother, and the latter's brother, Mr. George Atkinson, visited the Mascioli Apartment Building and were shown through the Mascioli's own apartment, by Mrs. Mascioli, who told them that it was similar to the apartment that was advertised. The latter was not shown, according to Mrs. Mascioli, because it needed cleaning and painting and was still occupied by a tenant. On the evidence, I find, that the tenant did not in fact leave until March 15th.

On this occasion, Mrs. Daisy Anderson indicated that she and her daughter wanted the apartment, that it was intended for just the two of them, and that she would return later with a deposit. According to Mrs. Mascioli Miss Joan Anderson several times indicated that the apartment would be occupied by all three of the visitors, that is herself, her mother, and her uncle. Later that same evening the three returned and Mrs. Anderson offered a deposit. Mrs. Mascioli refused to take the deposit saying that she had no authority to do so in the absence of her husband. Mrs. Anderson left her phone number in order to be called when Mr. Mascioli returned. When no such call was forthcoming, Miss Anderson called the Mascioli number, identified herself, and was told that the apartment had been rented to a friend of Mr. Mascioli. On March 15th, without identifying herself this time, Miss Anderson called again and was informed that the apartment was available for rent. Thereupon she informed her mother and, as indicated, Mrs. Anderson lodged a complaint with the Ontario Human Rights Commission. Also, on March 15th, there was evidence that a Mr. F. C. Haussmann, a Human Rights Officer, called the

Mascioli number, after interviewing Mrs. Anderson, and was likewise informed that the apartment was still available.

On the evening of March 15th, Mr. Haussmann interviewed Mr. Mascioli and was told that the reason why the apartment was not rented to Mrs. Anderson was because he understood that it would be occupied by three persons (Mrs. Anderson, Miss Anderson and Mr. Atkinson) and that he only wished to rent the apartment to two persons. On the following day, March 16th, Mr. Haussmann wrote to Mr. Mascioli clearing up any misunderstanding on this point, if such there really was, and advised the latter that

"I have now ascertained that it is indeed only Mrs. Anderson and her daughter Joan who wish to rent the apartment you advertised in the Ottawa Citizen.

I would ask, therefore, that you advise this office within ten days of the acceptance or rejection of Mrs. Anderson's application to rent Apartment #3, 75 Holland Avenue...."

This letter from Mr. Haussmann, I find, was received by Mr. Mascioli on March 17th. After a brief consultation with Mrs. Mascioli, and within two hours of receiving this letter, Mr. Mascioli went to a friend, or business acquaintance, and had the latter frame a letter to the Ontario Human Rights Commission wherein he stated that the apartment in question was absolutely essential for the use of his own family, in particular to provide study and recreational facilities for his daughters, or one of them, and that accordingly "I am unable to rent said apartment to anyone".

However, and notwithstanding, the evidence discloses, and I so find, that virtually coincidentally with the dictation of this letter by Mr. Mascioli,

the apartment was being shown to a Miss Marilyn Chamberlain, a white woman, who was looking for an apartment for herself and her mother. Miss Chamberlain had reservations at the time about renting the apartment but, after second thoughts, returned to the building on March 24th and on that date signed a lease for the apartment in question. In his evidence, Mr. Mascioli explained this about-face by saying that his daughters, or daughter, had tired of studying and playing in the vacant apartment and that on or about March 22nd or 23rd he decided to once more put it up for rent. Nevertheless, in an interview with a Mr. Gerry Meadows, a Human Rights Officer, on May 6th, Mr. Mascioli still insisted, which was manifestly not the case, that a bedroom in the apartment (now occupied by the Chamberlains) was still being used by the daughters for their own purposes.

I believe that the foregoing adequately and representatively sets out the salient features and evidence in this case.

In the opinion of the Board the pattern and coincidence of events, coupled with the hollowness of the explanations offered by the respondents, points to the almost irresistible conclusion that discrimination was practiced against the Andersons, and the complainant Mrs. Daisy Anderson, by the Masciolis and that such discrimination was founded upon race and colour in respect of a self-contained dwelling unit, contrary to the prohibitions of the Ontario Human Rights Code.

I believe the testimony of Miss Joan Anderson that she was told that the apartment had already been rented, when she first visited the building on

March 9th, and that she was similarly so informed when she identified herself over the telephone. I also believe her testimony that whenever she called, without identifying herself, she was informed that the apartment was available. I also find that it was clear from the beginning that only two persons intended to rent the apartment, Mrs. Anderson and her daughter, and that it was never contemplated that Mr. Atkinson or any other person intended moving in with them as a ménage de trois. In any event, any lingering doubt on this point, was effectively removed by the letter of Haussmann to Mascioli dated March 16.

It will be recalled, too, that Mrs. Mascioli informed the Andersons on the March 13 visit that she had no authority to accept a deposit or negotiate a lease without her husband. This did not prevent her from doing exactly that when she accepted a deposit from Miss Chamberlain and executed a lease to Miss Chamberlain on March 24th, which was done in the absence of her husband. Moreover, on the occasion of the first visit of the Andersons and Mr. Atkinson to the premises on March 13th, if, as alleged, Mrs. Mascioli did in fact inform them that she could not rent to them, because they were three in number, it seems singularly strange that Mrs. Anderson would nevertheless go home and return with a deposit to secure the apartment. Such would be simply a wasteful exercise in futility if the facts were as alleged by Mrs. Mascioli.

Again, there is the extraordinary coincidence in the events of March 17th, where within two hours of receiving the letter from Mr. Haussmann Mr.

Mascioli decides that this rather valuable apartment is urgently needed for the use of his daughters and that therefore it cannot be rented to anybody, including the Andersons. Conveniently, however, the daughters tire of this largesse in very short order and, within the week, the apartment is once again available for rent and is promptly leased to Miss Chamberlain, who is white. The subsequent statement which I find Mr. Mascioli made to Mr. Meadows, in the interview of May 6th, that his daughters were still making use of one of Miss Chamberlain's bedrooms is, simply, false.

In the result, the Board finds that the complaint of Mrs. Daisy Anderson has been established and that she was denied the rental of living accommodation because of race and colour, contrary to the Ontario Human Rights Code. Such being the case, it becomes incumbent upon the Board to "recommend to the Commission the course that ought to be taken with respect to the complaint" (the Ontario Human Rights Code, 1961-62, c. 93, s.13, ss.3).

In the circumstances of this case, the recommendations of the Board are as follows. In the first place, letters of assurance should be sent by Mr. Mascioli to the complainant and to the Ontario Human Rights Commission, that is, assurances that there will be compliance with the Code in the future. Secondly, it is recommended, that an Ontario Human Rights card be posted in the hallways at 75 Holland Avenue. Thirdly, it is recommended that a vacancy notice for a period of one year be sent to the Ontario Human Rights Commission, that is, advising the Commission whenever there are vacancies in the apartment building. Finally, there should be some measure of compensation

paid to Mrs. Anderson for the extra expense to which she has been put by reason of the fact that she was unable to secure the Mascioli apartment. The evidence as to extra expenses incurred by the complainant is not as clear as might be desired. From the evidence it appears that Mrs. Anderson and her daughter obtained another apartment very shortly after giving up on the Mascioli apartment and any extra expenses involved in subsequent apartment hunting would probably be minimal. The rent is the same (\$150.00 a month) for both apartments but the apartment where the Andersons now reside is much less convenient to the work of Mrs. Anderson and to the school which Joan Anderson attends. According to her testimony, which was unchallenged, Mrs. Anderson is now obliged to pay \$5.50 a week for bus and taxi transportation to and from work, and her daughter Joan must pay \$2.00 a week bus fare, given to her by her mother, to attend school. On the other hand, if they were living at 75 Holland Avenue, they both would be within walking distance of their destinations and, only rarely, would it be necessary to take public transportation.

In arriving at an allowance for out of pocket expenses based upon increased transportation costs it would seem that a fair period of assessment would be from the date of the complaint, March 15, 1971, to the date of the hearing, that is November 2, 1971, and a fair rate of assessment would be approximately \$6.00 a week. It is accordingly recommended that Mr. Mascioli pay the complainant the sum of \$200.00 by way of compensation.

All of which is respectfully submitted.

Dated at London, Ontario, this 18th day of January, 1972


R. S. Mackay

